FILE COPY

Office - Supreme Court, U
FILED
NOV 24 1948
CHARLES ELMORE CROPL
CLER

Supreme Court of the United States.

OCTOBER TERM, 1948.

No. 343.

UNITED SHOE MACHINERY CORPORATION,
Petitioner,
v.
JACOB SIMON KAMBORIAN
AND
INTERNATIONAL SHOE MACHINE CORPORATION,
Respondents.

REPLY BRIEF FOR PETITIONER.

Respondents' brief (pp. 9, 11) accuses petitioner of raising "purely hypothetical" questions, based on misrepresentation by petitioner of the facts contrary to the findings of the lower courts. Respondents, however, can point to no instance of such alleged misrepresentation. On the contrary, petitioner stated the facts in its petition and brief exactly as found by the courts below. The only questions presented are questions of law arising upon the facts as found.

Respondents say (Brief, p. 2) that "there is no question of public importance here raised *which has not heretofore been decided* by this Court" (emphasis in text). Respondents, however, cite no decision of this Court (or indeed of any other court) which is dispositive of any of the important questions raised by petitioner. The decisions of this Court cited by the Court of Appeals and referred to at page 7 of respondents' brief are not controlling, for reasons fully pointed out at page 18 of petitioner's main brief.

Respondents' contention (Brief, p. 3) that the requirements of R.S. Sec. 4888, relied on by petitioner as invalidating the claims, apply only to the machine patent and not to the method patent is without merit. The requirement of the statute that "in case of a machine he shall explain the principle thereof" makes no distinction between a patent which claims the method of operation of a machine and one which claims the machine as such, the courts below did not recognize such alleged distinction, and respondents cite no authority which does.

Respondents' brief asserts, without support, that the patents in suit are for "pioneer inventions," and devotes much space to a discussion of the alleged importance of the machine, matters which, if true, would have no bearing whatever on the issues raised by the petition. Actually, the alleged invention was a mere "combination of two old and well known devices," as the District Court specifically held in its opinion at R.I. 14, the passage quoted at page 15 of respondents' brief.

Respondents do not deny (as they could not) that the shoe machinery industry here affected is concentrated in the First Circuit. The fact that petitioner has been a party to patent litigation on shoe machine patents in other Circuits (see Respondents' Brief, p. 10 and Appendix B) in

no way indicates that there is any likelihood of further litigation on the patents here involved in any other Circuit.

It is submitted that respondents' brief shows no ground for denial of the petition, and that the petition should be granted in order that the important questions therein raised may be authoritatively settled by this Court.

Respectfully submitted,

MERWIN F. ASHLEY,
Attorney for Petitioner.

EDGAR H. KENT,
FISH, RICHARDSON & NEAVE,
Of Counsel.